

No. 48820-5-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

DARON KOONTZ,  
Appellant,

v.

GAYNOR FITZGERALD,  
Respondent.

---

BRIEF OF APPELLANT DARON KOONTZ

---

Megan D. Card  
Washington State Bar No. 42904  
Attorney for Appellant

RODGERS KEE & CARD, P.S.  
324 West Bay Dr NW, Ste. 201  
Olympia, WA 98502  
(360) 352-8311

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>ASSIGNMENTS OF ERROR.....</b>	<b>1</b>
<b>III.</b>	<b>STATEMENT OF THE CASE.....</b>	<b>3</b>
<b>IV.</b>	<b>SUMMARY OF ARGUMENT.....</b>	<b>7</b>
<b>V.</b>	<b>ARGUMENT.....</b>	<b>7</b>
	<b>A. THE TRIAL COURT ERRED IN AWARDING POST-SECONDARY EDUCATIONAL SUPPORT FOR ELARI KOONTZ BECAUSE THERE IS INSUFFICIENT EVIDENCE IN THE RECORD AS TO WHETHER ELARI IS IN FACT DEPENDENT, AND IF SO, WHAT HER NEED IS.....</b>	<b>8</b>
	<b>B. IF THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING POST-SECONDARY EDUCATIONAL SUPPORT TO ELARI KOONTZ, THEN THE TRIAL COURT MADE ERRORS IN THE PROVISIONS WITHIN THE ORDER OF CHILD SUPPORT.....</b>	<b>14</b>
	<b>C. ATTORNEY'S FEES.....</b>	<b>18</b>
<b>VI.</b>	<b>CONCLUSION .....</b>	<b>18</b>
<b>VII.</b>	<b>APPENDIX.....</b>	<b>A-1</b>

## TABLE OF AUTHORITIES

### TABLE OF CASES

<i>Childers v. Childers</i> , 89 Wn.2d 592, 601, 575 P.2d 201 (1978).....	7
<i>In re Marriage of Kelly</i> , 85 Wash. App. 785, 795, 934 P.2d 1218 (1997)..	7
<i>In re Marriage of Newell</i> , 117 Wash. App. 711, 718, 72 P.3d 1130 (2003).....	7, 8
<i>In re Marriage of Shellenberger</i> , 80 Wash. App. 71, 84, 906 P.2d 968 (1995).....	13

### STATUTES

RCW 26.19.090 .....	1, 9, 10, 12, 15, 16, 18
RCW 26.09.140 .....	18

## **I. INTRODUCTION**

The Appellant, Daron Koontz, and the Respondent, Gaynor Fitzgerald, were married from March 30, 1991 to November 29, 2005. The parties had three children of their marriage, Jessica Koontz, Elsia Koontz, and Elari Koontz. Elsia and Elari are twins.

This case stems from a Petition for Modification of Child Support filed by Ms. Fitzgerald for post-secondary educational support for Elari Koontz, age nineteen (19).

## **II. ASSIGNMENTS OF ERROR**

### ***Assignments of Error***

**No. 1:** The trial court erred in awarding post-secondary educational support for Elari Koontz.

**No. 2:** If the court did not err in awarding post-secondary educational support to Elari Koontz, then the trial court erred in the following provisions of the order of child support: the amount of the transfer payment at provision 3.5, the amount of the standard calculation at provision 3.6, the termination date at provision 3.13, and by not specifically listing the orders of the court regarding post-secondary education support in provisions 3.14 and 3.15 including that Elari is responsible for one-third of educational expenses.

***Issues Pertaining to Assignments of Error***

**No. 1:** Did the trial court abuse its discretion when it ordered post-secondary educational support for Elari Koontz when there is no evidence in the record that the Elari is in fact dependent and relying upon her parents for the reasonable necessities of life under RCW 26.19.090 and the factors therein, including the actual cost of postsecondary educational support. (Assignment of Error 1.)

**No. 2:** Did the trial court err by making a finding that Mr. Koontz had substantial excess income based on his new spouse when she stopped working in August 2015? (Assignment of Error 1.)

**No. 3:** Did the trial court err by not ordering the correct transfer payment as listed at line 17 of the worksheets less the awarded deviation? (Assignment of Error 2.)

**No. 4:** Did the trial court err by not ordering the correct standard calculation as listed on line 17 of the worksheets? (Assignment of Error 2.)

**No. 5:** Did the trial court err by not listing the termination language in the order pursuant to RCW 26.19.090? (Assignment of Error 2.)

**No. 6:** Did the trial court err by not providing specific information in the order as to what expenses each party is responsible for, i.e. books, fees, tuition, etc.? (Assignment of Error 2.)

### **III. STATEMENT OF THE CASE**

Ms. Fitzgerald filed a Petition for Modification of Child Support on May 22, 2015 requesting post-secondary educational support for Elari Koontz, age nineteen (19).<sup>1</sup> CP at 23-26. To support her petition, Ms. Fitzgerald filed a Financial Declaration of Petitioner, Declaration of Gaynor J Fitzgerald, Washington State Child Support Schedule Worksheets Proposed by GJ Fitzgerald, Sealed Financial Source Documents, and a Financial Statement. CP at 5-22. Ms. Fitzgerald's declaration included a letter from the University of Washington – Tacoma stating Elari had been admitted for the upcoming autumn 2015 quarter as a junior, but had not yet declared her major. CP at 16. No financial information pertaining to the University of Washington – Tacoma tuition costs or fees was provided in Ms. Fitzgerald's initial request. CP at 5-22.

Mr. Koontz responded to Ms. Fitzgerald's petition and respectfully requested that the court not award post-secondary support

---

<sup>1</sup> Ms. Fitzgerald initially requested to extend child support beyond Elsia Koontz's eighteenth (18<sup>th</sup>) birthday, but dismissed her request and child support for Elsia terminated in June 2015. CP at 186.

for Elari. CP 29-37; 51-57. In support of his request that the court not award post-secondary support, Mr. Koontz filed a responsive declaration, financial declaration, and proof of income. CP at 29-37; 45-58<sup>2</sup>.

The trial court first heard argument in this matter on July 16, 2015. CP at 59. The court found that neither party filed updated financial information and continued the hearing to August 13, 2015. CP at 59. Both parties supplemented the record with financial information. CP at 60-61.<sup>3</sup>

At the August 13, 2015 hearing, the court directed Ms. Fitzgerald to file written information about the enrollment costs for Elari, including a cost bill from the University of Washington – Tacoma explaining the costs for Elari. CP at 62-63. The court entered an Order re: Continuance continuing the hearing to September 21, 2015. CP at 63-64. Ms. Fitzgerald filed a supplemental declaration on September 15, 2015 which provided a University of Washington Tuition Charge Statement, class schedule, and 2015-2016 Quarterly Tuition Rates. CP at 65-76.

---

<sup>2</sup> The Clerk's Papers only provide the coversheet for the sealed documents filed by Mr. Koontz. The income tax records, pay stubs, and W-2's are not provided in the record.

<sup>3</sup> The Clerk's Papers only provide the coversheet for the sealed documents filed by Mr. Koontz and Ms. Fitzgerald. The income tax records and pay stubs are not provided in the record.

At the hearing on September 21, 2015 the court heard argument from both parties and took the matter under advisement. CP at 77. Written orders, including the final order of child support, child support worksheets, findings of fact and conclusions of law, and order on modification of child support, were issued December 22, 2015. CP at 78-101.

Mr. Koontz filed a motion to revise the commissioner's ruling on December 31, 2015. CP at 102-103. The hearing on the motion for revision was held on February 19, 2016. CP at 106. The Court ordered that Mr. Koontz receive updates on how Elari was doing in school, and required information on Elari's University of Washington expenses and financial information regarding her grants and loans. CP at 106. The court continued the hearing until March 4, 2016 and informed the parties they did not need to appear; a written decision would be provided. CP at 106. On February 24, 2016, Ms. Fitzgerald filed another supplemental declaration with a written statement of expenses, a Notice of Revised Award from the University of Washington – Tacoma, a copy of an automobile insurance statement, and an unofficial transcript from the University of Washington - Tacoma. CP at 107-114.

The court entered a new order of child support (without worksheets) on March 4, 2016 without the presence of either party. CP



at 117; 118-132. This order required the obligor to provide information regarding Elari's progress (courses completed and being taken and grades to date at university) no later than March 4, 2016. CP at 132. It also required the obligor to provide information on Elari's grants, financial aid, and expenses to date at the University of Washington no later than March 4, 2016. CP at 132. The court, sua sponte, entered an amended final order of child support on March 29, 2016 that changed the requirement to provide the information regarding post-secondary support to the obligee, Ms. Fitzgerald.<sup>4</sup> CP at 133-134. To date, Ms. Fitzgerald has not provided any of this information. The order also allowed Mr. Koontz to request suspension of support should attendance and satisfactory progress in education cease. CP at 133-134.

Mr. Koontz filed a motion for reconsideration on April 7, 2016 asking the court to reconsider its written order of child support entered on March 29, 2016. CP 178-182. The court heard argument on April 15, 2016 and granted the motion to reconsider in part, and denied it in part. CP 183-184. Specifically, the court found that provisions 3.5 and 3.6 of the order of child support did not accurately reflect the Washington State

---

<sup>4</sup> The court filed the amended order to correct its own scrivener's error under provision 3.23 of the order changing the word "obligor" to "obligee."

Child Support Worksheets entered on December 22, 2015.<sup>5</sup> CP at 184. The court ordered that a new order of child support would be entered to accurately reflect the child support worksheets previously adopted by the court.<sup>6</sup> CP at 184. All other issues in the motion were denied. CP at 184. Mr. Koontz timely filed this appeal. CP at 135-177.

#### IV. SUMMARY OF ARGUMENT

The trial court abused its discretion by awarding post-secondary educational support for Elari without sufficient evidence in the record to find that Elari is dependent and relying upon her parents for the reasonable necessities of life. Moreover, the record is devoid of any information regarding the actual need of Elari's post-secondary educational support and the trial court's award of such support is without merit.

#### V. ARGUMENT

The trial court has broad discretion to order support for post-secondary education. *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978); *see also In re Marriage of Newell*, 117 Wash. App. 711, 718, 72 P.3d 1130 (2003); *In re Marriage of Kelly*, 85 Wash. App. 785, 795,

---

<sup>5</sup> The order of child support at provision 3.6 shows a standard calculation of \$1394 (\$697 per child) at line 5 of the child support worksheets, but this amount is the total amount of support for both children. The \$1394 is both parents' obligation, not just Mr. Koontz. Accordingly, provision 3.5 of the order of child support is also incorrect and does not accurately reflect line 17 of the child support worksheets (less the deviation awarded at provision 3.7).

<sup>6</sup> A presentation hearing has been set for July 8, 2016 after the deadline for Appellant's brief. Should a new order of child support be entered, Appellant respectfully requests that it be included as part of this appeal under the Rules of Appellate Procedure 2.4(c). These errors are including in this appeal under "Assignments of Error" in case a new order is not entered.

934 P.2d 1218 (1997). A trial court abuses that discretion when its decision is based on untenable grounds or reasons. *Newell*, 117 Wash. App. at 718, 72 P.3d 1130.

**A. THE TRIAL COURT ERRED IN AWARDING POST-SECONDARY EDUCATIONAL SUPPORT FOR ELARI KOONTZ BECAUSE THERE IS INSUFFICIENT EVIDENCE IN THE RECORD AS TO WHETHER ELARI IS IN FACT DEPENDENT, AND IF SO, WHAT HER NEED IS.**

College is a privilege; it is not a right. The court does not order married couples to pay for their child's post-secondary education, nor should it do so. After an adult child graduates college, they receive the benefit of earning a higher income; not their parents who are then stuck with their college bill. While the court does have broad discretion to order support for post-secondary education for divorced couples in a modification proceeding, the court should not abuse this discretion when there is insufficient evidence in the record for the court to make a finding that a child is dependent and relying upon her parents for the reasonable necessities of life.

Mr. Koontz asserts that the trial court abused its discretion in awarding post-secondary educational support for Elari as there is not sufficient evidence in the record for the court to have found that Elari is in fact dependent and relying upon Mr. Koontz and Ms. Fitzgerald for her reasonable necessities of life. The record does not state what the actual

out-of-pocket cost of tuition for Elari is and what her actual need is. The evidence does not address what the expectations of the parties were for Elari when they were together. CP at 80. The record provides little information about the nature of the postsecondary education sought. The record is lacking information about the parents' level of education, standard of living, and current and future resources. There is no evidence about the amount and type of support Elari would have been afforded had her parents stayed together. In short, the record is devoid of most information needed for the court to make a decision about whether to award post-secondary educational support, despite providing multiple opportunities to Ms. Fitzgerald to provide the court with that information. The trial court's decision to award post-secondary educational support for Elari is based on untenable grounds and reasons and therefore this court should deny Ms. Fitzgerald's petition for support.

RCW 26.19.090(2) sets forth criteria the trial court should consider when making an award of post-secondary educational support. The trial court initially must find that the child is dependent and "relying upon the parents for the reasonable necessities of life." RCW 26.19.090(2). Once that threshold requirement is satisfied, the trial court must also consider the following non-exhaustive list of factors: age of the child; the child's needs; the expectations of the parties for their children when the parents

were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the post-secondary education sought; and the parents' level of education, standard of living, and current and future resources. RCW 26.19.090(2). "Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together." RCW 26.19.090(2).

In this case, the court never made a finding that Elari was dependent and relying upon her parents for the reasonable necessities of life. CP at 78-81. The trial court did conclude that *Elsia* (who is not at issue in this appeal) was dependent upon her parents for support as she has some medical problems and has not completed high school. CP at 78; 80. That finding of dependency and need was never made for Elari. CP at 80. Despite not making the threshold finding that Elari is in fact dependent and relying upon Mr. Koontz and Ms. Fitzgerald, the trial court discussed the other factors as set forth in RCW 26.19.090 concluding that it was "appropriate to provide for the financial support of Elari for her post-secondary education, based upon a full assessment of the factors." CP at 80.

Specifically, the court concluded that "Elari is of appropriate age, she has the need for financial assistance from her parents, and the child has the desire aptitude and abilities to successfully complete a post-

secondary program.” The court also concluded that it was “unclear if the issue of post-secondary education was ever raised by the parties when they were together or the post-secondary educations of the parents.” The court then ordered that Elari should be responsible for 1/3 of her support obligation making Mr. Koontz responsible for \$460.00 per month payable to Ms. Fitzgerald while Elari is enrolled in college and living at home. CP at 80. Finally, the court ordered that “the total cost of tuition, books, and fees should be divided by the parties such that Elari is responsible for 1/3 of the obligation, and the remaining 2/3 divided such that Mr. Koontz pays 66% and Ms. Fitzgerald pays 34%.” CP at 80. These orders were never incorporated into the final order of child support. CP at 83-96; 118-132; 133-134.

In looking at the evidence provided regarding Elari’s post-secondary education it is clear that the court based its decision to award post-educational support on untenable grounds and reasons. There was not enough information in the record for the court to determine that Elari was actually dependent and in need of support. What is Mr. Koontz’s share of Elari’s tuition costs? We don’t know. A University of Washington Tuition Charge Statement was provided that shows total tuition of \$3,969.00. CP at 69. It also shows financial aid disbursements in the amount of \$6,801.00 including grants and scholarships in the

amount of \$5,445.00. CP at 69. What is Elari's need? A revised award was also provided that showed total grants and scholarships of \$16,336.00. If each quarter of tuition is \$3,969.00, that's a total of \$15,876.00 per year. So what is Elari's need? The trial court erred when it ordered post-secondary educational support for Elari because she is not dependent upon her parents and does not rely on them for the reasonable necessities of life as she has enough in grants and scholarships to cover her costs. RCW 26.19.090(2).

Ms. Fitzgerald was ordered by the court to supplement the record on five different occasions and it is still unknown how Elari is dependent and what Elari's need for tuition and costs are. In the final order of child support entered on March 4, 2016 (and later amended on March 29, 2016 to correct a scrivener's error), it once again ordered Ms. Fitzgerald to provide information regarding "Elari's progress (courses completed and being taken and grades to date at university). She was also required to provide information on Elari's grants, financial aid, and expenses to date." CP at 134. The order further provided that Mr. Koontz could request a suspension of support should attendance and satisfactory progress in education cease, but Mr. Koontz doesn't know that information because he was never been provided it in the first place.

*In re Marriage of Shellenberger*, 80 Wash. App. 71, 84, 906 P.2d 968 (1995), Division One of the Court of Appeals held that a trial court abuses its discretion if it awards a postsecondary educational support obligation that would force the obligor parent into bankruptcy or would require selling the family home. In this case, Mr. Koontz provided information to the court showing that he did in fact sell his home and that he is living on a thirty-seven (37) foot boat in Florida. CP at 30. Mr. Koontz also informed the court that when the parties' divorced, Ms. Fitzgerald was awarded all of the equity in their family home which was around \$300,000.00. CP at 30. The ordering of post-secondary education support would be a sufficient financial hardship to Mr. Koontz such that the trial court's discretionary ruling should be overturned.

Additionally, the trial court erred when finding that Mr. Koontz has substantial income in excess of his monthly needs based on his new spouse's income. CP at 79. Mr. Koontz's filed a financial declaration on June 29, 2015 stating that as of August 2015 his wife's income would be \$0. CP at 47. Thus, the court erred when making this finding as a basis to conclude that Mr. Koontz had the financial ability to pay for Elari's college costs. The record does not support an award of post-secondary educational support as it is not clear that Elari is in fact dependent and



relying upon her parents for her necessities of life. Mr. Koontz requests that Ms. Fitzgerald's petition for support be denied.

**B. IF THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING POST-SECONDARY EDUCATIONAL SUPPORT FOR ELARI KOONTZ, THEN THE TRIAL COURT MADE ERRORS IN THE PROVISIONS WITHIN THE ORDER OF CHILD SUPPORT.**

**i. The amount of the transfer payment at provision 3.5 of the order of child support is incorrect.<sup>7</sup>**

Although the final order of child support was amended a few times, the child support worksheets entered on December 22, 2015 were not revised and new worksheets have not been entered to date. CP at 97-101. Line five (5) of the worksheets shows the "Basic Child Support Obligation" for Elsia Koontz and Elari Koontz of \$697.00 each. CP at 97. The combined amount of support for both children is \$1,394.00 which is the obligation of both parents. CP at 97. Line seventeen (17) of the worksheets shows the "Standard Calculation" or "Presumptive Transfer Payment" for each parent. CP at 99. Mr. Koontz's presumptive transfer payment for both children is \$921.43. CP at 99. However, provision 3.5 of the order incorrectly states that Mr. Koontz is 100% responsible for both children, instead of each party's proportional share. CP at 88. Specifically, provision 3.5 states that the transfer payment for Elsia is

---

<sup>7</sup> A presentation hearing has been set for July 8, 2016 after the deadline for Appellant's brief. Should a new order of child support be entered, Appellant respectfully requests that it be included as part of this appeal under the Rules of Appellate Procedure 2.4(c).

\$697.00 (the total amount of her support) and the transfer payment of Elari is \$460.00, which results in a total monthly transfer amount of \$1,157.00. CP at 88. The court did order a thirty-four percent (34%) downward deviation of Elari's child support obligation to account for Elari's obligation to provide some self-support (from \$697.00 to \$460.00, a difference of \$237.00 or 34%). It is presumed that the court mistakenly ordered that child support be set based on line five (5) of the worksheets instead of line seventeen (17).

The correct transfer payment at provision 3.5 for Elari should be \$391.33 which is based on the income figures listed in the worksheet resulting in a standard transfer payment of \$592.92, less a deviation of 34% (or \$201.59) based on Elari's obligation of self-support.

Mr. Koontz assigns additional error to the trial court's deviation based on the lack of evidence in the record of Elari residing with Ms. Fitzgerald or what her need for support actually is. RCW 26.19.090(1) provides that the "child support schedule shall be advisory and not mandatory for postsecondary educational support." RCW 26.19.090(1). While Ms. Fitzgerald did submit a copy of two different auto insurance policies for different vehicles, it is unknown if this is actually for Elari, or what, if any, other needs Elari has. CP at 14; 112. Mr. Koontz does not believe child support should be set at \$391.33 and asks that no transfer

payment be ordered, or that the court use further discretion to deviate downward based on lack of evidence and Elari's ability to support herself.

**ii. The standard calculation at provision 3.6 of the order of child support is incorrect.<sup>8</sup>**

As stated supra, the trial court used the figure listed at line five (5) of the worksheet instead of line seventeen (17) for the standard calculation. CP at 89; 98-99. Provision 3.6 should state \$592.92 for just Elari (or \$921.43 for both children). CP at 89; 98-99.

**iii. The termination date at provision 3.13 of the order of child support should include the statutory language as provided in RCW 26.19.090.**

The termination date in the order of child support states that post-secondary support shall end when Elari is not attending school. Mr. Koontz does not know when Elari is attending school or not, or even if she's going to school now because he has never been provided the appropriate documentation as ordered. Nonetheless, the order of child support should include the statutory language as provided in RCW 26.19.090 and set out below:

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically

---

<sup>8</sup> A presentation hearing has been set for July 8, 2016 after the deadline for Appellant's brief. Should a new order of child support be entered, Appellant respectfully requests that it be included as part of this appeal under the Rules of Appellate Procedure 2.4(c).

suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

**iv. Provision 3.14 and 3.15 of the order of child support should specifically list the orders of the court, including that Elari is responsible for one-third of her educational expenses.**

The court stated in the Findings of Fact and Conclusions of Law entered on December 22, 2015 that “the total cost of tuition, books, and fees should be divided by the parties such that Elari is responsible for 1/3 of the obligation, and the remaining 2/3 divided such that Mr. Koontz pays 66% and Ms. Fitzgerald pays 34%.” CP at 80. However, this language was never incorporated into the order of child support. CP at 83-96; 118-132; 133-134. Instead, the order of child support states at provision 3.15 that the “petitioner shall pay 34% and the respondent 66%” of the educational expenses. CP at 92. Additionally, there should be language in the order of child support to specify exactly what the court is ordering. Is Elari responsible for one-third of her actual need (after grants and scholarships)? Should Ms. Fitzgerald or Elari provide receipts to Mr. Koontz to show the cost of books and fees? Does Elari need to provide

her Free Application for Federal Student Aid (“FAFSA”) form to Mr. Koontz to show what her need is? None of this information has been provided to Mr. Koontz, and Mr. Koontz’s obligation is not specified in the order.


**C. ATTORNEY’S FEES**

Mr. Koontz respectfully seeks attorney’s fees in this appeal under RCW 26.09.140 based on the lack of documentation provided by Ms. Fitzgerald despite the court’s request to provide the information on five (5) different occasions.

**VI. CONCLUSION**

The trial court erred by ordering post-secondary educational support for Elari when the record does not reflect that Elari is dependent or relying upon her parents for the necessities of life. Furthermore, there is no supporting evidence as to Elari’s financial needs or otherwise, or any of the other factors laid out in RCW 26.19.090. The award of post-secondary support in this case is based on untenable grounds must be overturned for abuse of discretion.

Respectfully submitted this 5<sup>th</sup> day of July, 2016.

  
MEGAN D. CARD, WSBA #42904  
Attorney for Appellant Koontz

**RCW 26.19.090**

**Standards for postsecondary educational support awards.**

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

[1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

**NOTES:**

**Severability—Effective date—Captions not law—1991 sp.s. c 28:** See notes following RCW 26.09.100.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

DARON KOONTZ,  
Appellant,  
  
vs.  
  
GAYNOR FITZGERALD,  
Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

NO. 48820-5-II  
  
AFFIDAVIT OF SERVICE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

That I am now and at all times herein mentioned was a citizen of the United States, a resident of the State of Washington, and over the age of eighteen (18) years and not a party to or interested in the above-entitled matter.

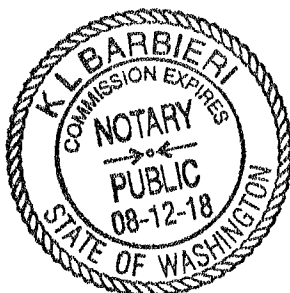
DATED this 5<sup>th</sup> day of July, 2016.

of July, 2016.

Amy Rau  
Amy Rau

KX md

NOTARY PUBLIC in and for the State of  
Washington, residing at La Cen  
My commission expires: 08-12-18



**RODGERS KEE & CARD**

**July 05, 2016 - 9:39 AM**

**Transmittal Letter**

Document Uploaded: 1-488205-Affidavit~2.pdf

Case Name: Koontz and Fitzgerald

Court of Appeals Case Number: 48820-5

**Is this a Personal Restraint Petition?** Yes ☐ No

**The document being Filed is:**

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: \_\_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

☒ Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Megan Card - Email: [meganc@buddbaylaw.com](mailto:meganc@buddbaylaw.com)



# RODGERS KEE & PEARSON

**July 05, 2016 - 9:39 AM**

## Transmittal Letter

Document Uploaded: 1-488205-Appellant's Brief.pdf

Case Name: Koontz and Fitzgerald

Court of Appeals Case Number: 48820-5

**Is this a Personal Restraint Petition?** Yes ☐ No ☒

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Megan Card - Email: [meganc@buddbaylaw.com](mailto:meganc@buddbaylaw.com)